

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.NO.867 OF 2017

M.Ravi

.. Appellant/Petitioner

Vs.

Ranganayaki

.. Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 47 of the Guardian and Wards Act, against the judgment and decree dated 10.07.2015 made in G.W.O.P.No.67 of 2014 on the file of the Principal District Court, Tirupur.

For Appellant : Mr.Tamilkanal
for Mr.N.Manokaran

For Respondent : No representation

J U D G M E N T

This Civil Miscellaneous Appeal is preferred against the judgment and decree dated 10.07.2015 made in G.W.O.P.No.67 of 2014 on the file of the Principal District Court, Tirupur.

2. The appellant herein is the father of the minor child Sangeethkumar who has filed a petition in G.W.O.P.No.67 of 2014 against the respondent / his wife seeking custody of his minor son who is staying with his mother. That petition came to be dismissed by the trial Court on the ground that the minor son is living with his mother happily and comfortably. Aggrieved by the order the appellant has preferred this appeal.

3. The question of law that arises for consideration is as to "whether the trial Judge without considering the welfare of the minor child erroneously dismissed the petition filed by the appellant seeking custody of his minor son?"

4. Notice was issued to the respondent, but she refused to receive it.

5. The learned counsel for the appellant submitted that the appellant married the respondent and out of wedlock, they have one female and one male children. Due to the misunderstanding between them, they got separated and the respondent left her matrimonial home with her minor son, leaving the minor female child in the custody of the appellant. The appellant alleged that the respondent is in habit of using panparak and tobacco products and she is always with an intoxicated mood without caring about the family, and this is the main reason for the separation. He further submits that considering the welfare of the minor son, does not want his minor son to live with his mother, who is in habit of taking panparak. Though this fact was established before the trial Court, but without considering that, the trial Judge erroneously dismissed the petition. Hence, he prayed to allow this appeal.

6. Records perused. Before the trial Court the respondent has not filed any objection/petition against the appellant but she appeared along with her minor son.

7. It is admitted fact that minor girl child is with the appellant/petitioner and the minor son is with his mother, and the appellant and the respondent are living separately even from the date of the birth of minor son in the year 2009 onwards. The learned trial Judge in his order has observed that at the time of filing of the petition, the minor Sangeethkumar was aged about 4 $\frac{1}{2}$ years and that the petitioner has not taken any steps for re-union and hence, the children suffered without proper care. Though the respondent had not appeared before this Court, however before the trial Court she appeared along with her son and the trial Judge also enquired the minor son, who has stated that he is happy in staying with his mother, fulfilling his basic requirements. Thus, the economic condition of the respondent is such that she is in a position to take care of her minor son. Appellant/petitioner also not specifically stated that she is not taken care of the children, except the habit of consuming panparak by the respondent.

8. Further, due to the non-cooperation of the appellant / petitioner, the mistake committed in the birth certificate could not be rectified and the son was not admitted in any of the school due to wrong mention of the father's name. The appellant should have initiated some steps to correct this certificate, which would enable the minor son to get admission in the school. Therefore the reason stated by the trial Judge is justifiable which caused no interference by this Court.

9. At the same time as a father he is entitled to see his son and the child should not be deprived of the love and affection of his father. Therefore, the father is given

visitation rights to see his minor son who is in the custody of the respondent once in a week on every Sundays at 03.00 pm. to 06.00 p.m in the residence of the respondent without causing annoyance to the child. The appellant shall not take the child anywhere outside without the consent of the respondent.

10. Accordingly, this Civil Miscellaneous Appeal is partly allowed. Consequently, connected Miscellaneous Petitions is closed. No Costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rri

To

The Principal District Judge,
The Principal District Court,
Tirupur.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.20587

C.M.A.No.867 of 2017

LN(CO)
CS/10/06/2021

सत्यमेव जयते

WEB COPY